CC 97-211 PP 8/11

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August 6, 1998

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Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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Re: Proposed merger of [redacted] Communications Corp., CC Docket No. 97-211

Dear Chairman Kennard:

I am writing on behalf of the Payphone Service Providers Group (PSPG) and the San Diego Payphone Owners Association (SDPOA). PSPG and SDPOA are trade groups representing the interests of independent payphone service providers (PSPs) in California. The members of PSPG and SDPOA are primarily small businesses engaged in owning, operating and managing private (non-utility) payphones.

PSPG and SDPOA want to ensure that, as you consider CC Docket No. 97-211 for approval of the merger of MCI Communications Corporation and WorldCom, Inc., you are aware of MCI's longstanding refusal to comply with certain orders of the California Public Utilities Commission (CPUC) regarding compensation to California PSPs, including the members of PSPG and SDPOA, for calls originating from their payphones. PSPG and SDPOA submit that the public interest would be ill-served if the FCC granted MCI and its merger partner this much-sought regulatory approval despite MCI's continuing disregard for its obligation to bill, collect and remit to PSPs in California the pay station service charge (PSSC) for non-coin intraLATA calls from payphones.

In Decision 94-09-065 (the IRD decision) and Resolution T-15782 of March, 1996, the CPUC required MCI and other interexchange carriers who carry non-coin intraLATA calls from payphones to bill and collect from their customers and to pay to the PSP from whose payphone each call originated a PSSC in the amount of $.25 per call, less reasonable costs for billing and other administrative functions. Pacific Bell has collected and paid the PSSC since the CPUC's approval of a settlement in its Decision

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90-06-018; AT&T began paying it promptly after the CPUC's ruling in the IRD decision applied the PSSC to interexchange carriers who entered the intraLATA market after the CPUC opened that market to competition on January 1, 1995.

MCI, however, has refused to comply. In March 1996, the CPUC found it necessary in its Resolution T-15782 to order MCI to file a tariff to implement the PSSC. MCI responded with a tariff loaded with outlandish charges and conditions, such as a $10,000 "account set-up fee;" an 18-month lead time for MCI's "system development;" and "administrative" charges that would eat up $.205 of the $.25 per call PSSC. The tariff was obviously intended to prevent (and in fact has prevented) any PSP from ever collecting the PSSC from MCI. In October 1996, the CPUC observed in Decision 96-10-079 that MCI had adopted a policy "to just 'not pay' the PSSC." MCI nevertheless still does not pay the PSSC to any payphone owner in California.

In response to a complaint by Pacific Bell in the CPUC's C.97-02-027 (in which PSPG and SDPOA participated as intervenors), the CPUC's Administrative Law Judge Timothy Kenney issued a proposed decision on June 8, 1998, in which he finds that MCI unjustifiably has refused to bill and pay the PSSC and orders MCI to make reparations for a portion of the period at issue in the case. Judge Kenney also found (PD, mimeo. at 29) that MCI's PSSC tariff contains many unjust and unreasonable provisions and that "the fact that the unreasonable provisions were in MCI's tariff . . . lends weight to the Complainants' allegation that MCI's PSSC tariff was deliberately crammed with unreasonable terms and conditions in an effort to avoid having to pay the PSSC."

MCI has challenged virtually every aspect of Judge Kenney's PD that seeks to enforce MCI's obligation to pay the PSSC to payphone owners. MCI continues to defend its patently unreasonable PSSC tariff and openly threatens to seek review of the CPUC's decision in the California court of appeals.

MCI thus has placed itself in a position where it indefinitely withholds from PSPs compensation payments required by the CPUC, thereby creating a competitive advantage for itself relative to other intraLATA carriers like Pacific Bell and AT&T, and then uses those funds to finance litigation to fend off PSPs' efforts to collect the compensation the CPUC ordered 3 ½ years ago.

All the while, moreover, MCI itself also engages in the payphone business in California, including its contract with the State for payphones installed at state-owned facilities. In this respect, MCI's refusal to collect and pay the PSSC to other PSPs creates an artificial advantage for MCI as it competes against the members of PSPG and SDPOA. It also raises the prospect that MCI is denying revenue to the State under its contract by excluding the PSSC from the payphone revenues on which MCI's commission payments are based.

PSPG and SDPOA respectfully submit that MCI should not enjoy favorable review of its proposed merger with WorldCom so long as MCI continues to flaunt valid orders of the CPUC regarding the PSSC and ceaselessly litigates to maintain the unwarranted competitive advantages it gleans from its noncompliance. Accordingly, PSPG and SDPOA request that the FCC take no action on the MCI-WorldCom merger application until and unless MCI brings itself into compliance with the CPUC's orders requiring MCI to bill, collect and pay the PSSC to all PSPs in California.

Very truly yours,

Michael J. Thompson
Attorney for
Payphone Service Providers Group and
San Diego Payphone Owners Association